

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. WHITSITT,

Plaintiff,

v.

CITY OF STOCKTON, et al.,

Defendants.

No. 2:20-cv-01178 KJM AC

FINDINGS AND RECOMMENDATIONS

Plaintiff has filed a second motion to reopen this case under Federal Rule of Civil Procedure 60. ECF No. 25. Because plaintiff proceeds pro se, the matter is referred to the undersigned pursuant to Local Rule 302(c)(21). For the reasons that follow, the motion should be DENIED and plaintiff should be PRECLUDED from filing further motions to reopen this case.

**I. RELEVANT FACTUAL AND PROCEDURAL HISTORY**

Plaintiff filed his complaint on June 12, 2020 and moved to proceed in forma pauperis. ECF Nos. 1, 2. Pursuant to the IFP screening process, the initial complaint was rejected as duplicative of another case. ECF Nos. 4, 11. Judgment was entered on March 25, 2021 and this case was closed. ECF No. 12. On June 3, 2021, plaintiff moved to reopen the case pursuant to Fed. R. Civ. P. 60. ECF No. 13. The motion was denied over plaintiff's objections. ECF Nos. 14, 17, 20. On November 5, 2021, plaintiff filed a second Rule 60 motion to reopen. ECF No. 25.

## II. STANDARDS

2 Rule 60(b) of the Federal Rules of Civil Procedure provides for reconsideration of a final  
3 judgment or any order where one of more of the following is shown: (1) mistake, inadvertence,  
4 surprise, or excusable neglect; (2) newly discovered evidence which, with reasonable diligence,  
5 could not have been discovered within twenty-eight days of entry of judgment; (3) fraud,  
6 misrepresentation, or misconduct of an opposing party; (4) voiding of the judgment; (5)  
7 satisfaction of the judgment; and (6) any other reason justifying relief. Fed. R. Civ. P. 60(b). A  
8 motion for reconsideration on any of these grounds must be brought within a reasonable time, and  
9 no later than one year, of the entry of the judgment or the order being challenged. Id. “Motions  
10 for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure are  
11 addressed to the sound discretion of the district court...” Allmerica Financial Life Insurance and  
12 Annuity Company v. Llewellyn, 139 F.3d 664, 665 (9th Cir. 1997).

### III. ANALYSIS

14 In his present motion, plaintiff argues that he did not see or have an opportunity to object  
15 to the August 26, 2020 findings and recommendations (ECF No. 4) “due to missing them by my  
16 personal neglect” and asks the court to re-open this case on grounds of excusable neglect and  
17 extraordinary circumstances including mail theft. ECF No. 25 at 2. However, plaintiff did indeed  
18 object to the findings and recommendations. ECF No. 7. Plaintiff does not present any basis for  
19 reopening this case.

#### IV. CONCLUSION

21 It is HEREBY RECOMMENDED that plaintiff's motion (ECF No. 25) be DENIED.  
22 Moreover, because plaintiff has now filed two frivolous motions to re-open this case, it is  
23 FURTHER RECOMMENDED that the court issue an order directing that no further Rule 60  
24 motions will be considered.

25 These findings and recommendations are submitted to the United States District Judge  
26 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
27 after being served with these findings and recommendations, any party may file written  
28 objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a

1 document should be captioned "Objections to Magistrate Judge's Findings and  
2 Recommendations." Any response to the objections shall be filed with the court and served on all  
3 parties within fourteen days after service of the objections. Local Rule 304(d). Failure to file  
4 objections within the specified time may waive the right to appeal the District Court's order.  
5 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57  
6 (9th Cir. 1991).

7 DATED: November 9, 2021

8   
9 ALLISON CLAIRE  
10 UNITED STATES MAGISTRATE JUDGE

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